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Rio+20 and the Green Economy

The international community is heavily invested in negotiations leading to the United Nations Conference on Sustainable Development (UNCSD), which will convene at the level of Heads of State and Government, in Rio de Janeiro in June 2012 on the occasion of the 20th anniversary of the Earth Summit, the Rio Conference on Environment and Development. So, UNCSD is also referred to as Rio+20.

UNCSD is the most recent expression of UN environmental “summitry”,¹ a series of diplomatic mega-conferences that have marked the evolution of modern international environmental law and policy. Precedents include the Hague Peace Conference on Nature Conservation, which gathered 58 nations and was convened at the initiative of President Roosevelt in 1909, and the 1949 UN Scientific Conference on the Conservation and Utilization of Resources.² Since then, the UN General Assembly has periodically convened similar conferences. These conferences have included representatives from all States comprising the international community. They have taken an all-encompassing view of ‘global’ environment issues – that is, environmental issues that are transboundary, affect global commons or otherwise represent a shared concern for humankind. Unlike the issue-specific international treaty-based regimes that address individual environmental threats, UN environmental summits have a broader focus on the role of international cooperation and international law in addressing global environmental challenges.

These summits have gradually but exponentially opened up intergovernmental negotiations to a variety of other international stakeholders, notably NGOs and the private sector, but also of national actors, such as national parliamentarians, national judges and local authorities. Earlier summits have prompted the conclusion of new international environmental treaties. This is particularly the case of the 1972 Stockholm Conference on the Human Environment, which was followed by the adoption of the World Heritage Convention and the Convention on International Trade in Endangered Species, and of the Earth Summit, which led to the adoption of the so-called three ‘Rio Conventions’ on climate change, biodiversity and desertification. More recently, with the 2012 World Summit on Sustainable Development held in Johannesburg, these gatherings have turned into opportunities to collectively keep tabs on how well various internationally agreed political commitments and legally binding obligations are progressing. Attention has therefore shifted from filling an international regulatory gap to addressing possible implementation gaps: in other words, instead of defining programmatic frameworks for international environmental decision-making, efforts are now channeled into consolidating the results of earlier negotiations.³ Like Johannesburg, Rio+20 will focus on the latter, with the ambition to “secure renewed political commitment for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges.”⁴

UN Summits have also offered the international community at large the opportunity to develop an evolving *conceptual* basis upon which to build and give impetus to international environmental cooperation at all levels. The Stockholm Declaration agreed upon at the 1972 Summit provided basic principles to respond to the unprecedented recognition of *global* environmental challenges.⁵ The Rio Declaration adopted at the 1992 Earth Summit offered an additional set of principles with a view to balancing the global approach to environmental protection with economic and social development needs. Many therefore see it as an intergovernmental endorsement of the idea of

¹ Peter H. Sand, ‘Environmental Summitry and International Law’, (2002) 13 Yearbook of International Environmental Law 21.

² Ibid., at 21.

³ Ibid., at 22.

⁴ UN General Assembly Resolution 64/236 (2009), para. 20.

⁵ Declaration of the United Nations Conference on the Human Environment, 16 June 1972.

sustainable development. In addition, the Rio Declaration also includes other principles that have shaped and continue to shape international environmental law, such as the principle of public participation in environmental decision-making—which aims at ensuring equity between governments and their communities—and the idea of common but differentiated responsibility, aimed at ensuring equity between governments, particularly those of developed and developing countries.⁶ Johannesburg also adopted a Political Declaration, which, among other things, included poverty eradication and health as important aspects of global environmental cooperation, thereby strengthening the social pillar of the concept of sustainable development (the other pillars being environmental and economic).⁷ Following this collective conceptual exercise, one of the themes of the fast-approaching Rio+20 summit is the “green economy in the context of sustainable development and poverty eradication.”⁸

The promises and risks of the “green economy”

The “green economy encapsulates” the idea of resource-efficient and low-carbon economic development that contributes to the protection and enhancement of the natural resource base and promotes sustainable consumption and production patterns.⁹ It promises to put environmental protection centre-stage, turning it into an engine that could propel the international community out of the current financial, food and climate crises.

The green economy thus has the potential to overhaul the ‘environmental integration’ approach, in which environmental concerns are subordinated to short term economic and social priorities. The idea of environmental integration was part of the 1972 Stockholm Declaration, which called for an integrated approach to development planning so as to ensure that development is ‘compatible’ with the need to protect and improve the environment for the benefit of the population. The Rio Declaration cemented this concept, stating that environmental protection shall constitute an ‘integral part’ of the development process and cannot be considered in isolation from it. Johannesburg called for a collective responsibility to ensure that environmental regulations are seen as ‘interdependent and mutually reinforcing pillars’ of sustainable development, together with economic and social development. Going a step further, the green economy seeks to highlight that the most promising path, not only for effective international cooperation but also for business development and job creation at national and local levels, is to systematically seize the new investment and cost-effective opportunities that arise from the innovative regulatory and market-based approaches that are being devised to face multi-faceted environmental challenges. This approach is expected to leave significant flexibility to decision-makers, who have a choice of policy instruments: regulatory, economic and fiscal measures; investment in green infrastructure; financial incentives; subsidy reform; sustainable public procurement; information disclosure; and voluntary partnerships.¹⁰

Nonetheless, the green economy concept has opened a whole Pandora’s box of anxieties, particularly among developing countries. Many fear that it would substitute the concept of sustainable development that includes due consideration of poverty reduction and social exclusion, with a profit-driven and technology-obsessed vision of environmental management.¹¹ Furthermore,

⁶ Rio Declaration on Environment and Development, 12 August 1992.

⁷ Political Declaration of the World Summit on Sustainable Development, 4 September 2002.

⁸ UN General Assembly Resolution 64/236 (2009), para. 20.

⁹ The Future We Want - Zero draft of the outcome document of the UN Conference on Sustainable Development, January 2012, para. 20, available at

http://www.uncsd2012.org/rio20/content/documents/370The%20Future%20We%20Want%2010Jan%20clean%20_no%20brackets.pdf.

¹⁰ Ibid., para. 32.

¹¹ Ibid., para. 26: this anxiety is reflected in the reference to ‘green economy *in the context of* sustainable development and poverty eradication.’

there is concern that the green economy would create new trade barriers, impose new conditionalities on aid and finance, exacerbate technological dependence of developing countries on developed countries, or restrict the policy space for countries to pursue their own paths to sustainable development. In addition, developing countries stress that they would need the support of the international community to undertake the structural adjustments needed to take the green economy path.¹²

What about ecosystem services, human rights-based approaches and corporate accountability?

While the negotiations preceding Rio+20 have therefore already highlighted concerns related to equity and fairness among states in the context of the green economy, little has been said yet about how the green economy might impact equitable relations between governments and their communities. It thus remains to be seen whether the concept of green economy, in focusing on business opportunities and cost-effectiveness in environmental protection, will adequately factor in interlinkages with human well-being and community livelihoods.

The concept of ecosystem services could be useful to that end: it highlights the connection between environmental protection, human well-being and poverty eradication, as well as the need to carry out an economic valuation of ecosystems and of their protection (or of the costs of lack of protection). The 2005 Millennium Ecosystem Assessment¹³ was the first global study that catalyzed consensus on the term ecosystem services as the benefits people obtain from ecosystems, such as food, water, timber, and fibre; regulating services that affect climate, floods, diseases, wastes, and water quality; cultural services that provide recreational, aesthetic, and spiritual benefits; and supporting services such as soil formation, photosynthesis, and nutrient cycling. This understanding has been more recently complemented by global economic valuation studies showing why prosperity depends on maintaining the flow of benefits from ecosystems and why successful environmental protection needs to be grounded in sound economics, including explicit recognition, efficient allocation, and fair distribution of the costs and benefits of conservation and sustainable use of natural resources.¹⁴ The Stern Review of the Economics of Climate Change is a prominent example of this mode of thinking. It argues that introducing a price for greenhouse gas emissions is one of the most effective ways to mitigate climate change.¹⁵ The UNEP-supported Economics of Ecosystems & Biodiversity study makes a similar case. It argues that economic valuation is an indispensable means for mainstreaming biodiversity in decision-making across different policy areas and instruments, as well as for a combined approach to climate change mitigation and prevention of biodiversity loss.¹⁶

In addition, the concept of ecosystem services is linked to the ecosystem approach - the integrated, iterative, adaptive and precautionary¹⁷ approach to environmental management that is based on broader stakeholder engagement and consideration of the impacts of environmental degradation and

¹² Ibid., paras. 30-31.

¹³ The Millennium Ecosystem Assessment, *Ecosystems and Human Well-Being: Synthesis* (2005), www.maweb.org/en/index.aspx. For a discussion of legal implications, E. Morgera, 'The 2005 UN World Summit and the Environment: The Proverbial Half-Full Glass' (2006) 15 *Italian Yearbook of International Law* 53.

¹⁴ Elisa Morgera and Elsa Tsioumani, 'Yesterday, Today and Tomorrow: Looking Afresh at the Convention on Biological Diversity' (2011) *Yearbook of International Environmental Law* vol. 21 (online).

¹⁵ Stern, *The Economics of Climate Change. The Stern Review* (CUP, 2006), p. 349.

¹⁶ TEEB, 'The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of TEEB' (2010), www.teebweb.org.

¹⁷ Arie Trouwborst, 'The Precautionary Principle and the Ecosystem Approach in International Law: Differences, Similarities and Linkages', 18 *RECIEL* (2009), 26.

management options on the most vulnerable sectors of society.¹⁸ A key element that is emerging in the context of the ecosystem approach is the sharing of benefits arising from the conservation and sustainable use of biological resources and from access to genetic resources. In this benefit-sharing approach, governments are expected to involve local and indigenous communities in decision-making and good-faith negotiations. Furthermore, they must also reward them for sharing their traditional knowledge in planning and environmental management, or compensate them for the negative impacts of conservation or sustainable management activities on their natural resources or cultural practices. Governments are therefore expected to provide communities with a direct stake in protecting the environment, a legal market with moderate prices for sustainable natural resource use and an economic or other incentive to prevent degradation. Significantly, benefits can be of a monetary and non-monetary nature; in many instances communities may be more interested in the latter, particularly where the benefits involve legal recognition of traditional rights to tenure or access to certain resources or protection of customary sustainable use practices.¹⁹ Benefits may also refer to the provision of guidance (such as training or capacity-building) to improve the environmental sustainability of community practices, and the proactive identification of opportunities for better/alternative livelihoods in these endeavours, with a view to facilitating understanding of, and compliance with, the law. They may also include opportunities for local and indigenous communities to participate in private investments, and indeed international guidance on benefit-sharing has been drafted and applied directly also to the private sector.²⁰

In conclusion, the green economy can either place environmental protection within an economic development-dominated framework or place development within an ecosystem framework. According to the latter model, the State (and the private sector, in the absence of, or in addition to, relevant State action) is expected to adopt a bottom-up approach to building a true partnership with communities for the conservation and sustainable use of the environment by proactively providing a combination of economic and non-economic benefits. A well-rounded notion of the green economy could incorporate that perspective, thereby promoting not only high-tech and high-profit environmental management solutions, but also proper valuation and rewarding of the environmental stewardship of indigenous and local communities. Such an inclusive approach could also allow Rio+20 to contribute to a human rights-based approach to environmental protection and to corporate accountability - two themes that have proven elusive in the history of UN environment summits so far.²¹

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¹⁸ Convention on Biological Diversity, Principles of the Ecosystem approach, Decision V/6, 2000; and Refinement and Elaboration of the Ecosystem Approach, Based on Assessment of Experience of Parties in Implementation, in Ecosystem approach, Decision VII/11, 2004.

¹⁹ Elisa Morgera and Elsa Tsoumani, 'The Evolution of Benefit-sharing: Linking Biodiversity and Community Livelihoods' (2010) *Review of European Community and International Environmental Law* 15, 150-173.

²⁰ Elisa Morgera, 'From Corporate Social Responsibility to Accountability Mechanisms' in P.M Dupuy and J. Vinuales (eds), *Protecting the Environment in the XXIst Century - The Role of the Private Sector* (CUP, forth. 2012).

²¹ Dinah Shelton, "What Happened in Rio to Human Rights?" 3 Yearbook of International Environmental Law 75-93 (1992); Elisa Morgera, *Corporate Accountability in International Environmental Law* (OUP, 2009). Civil society has highlighted the need to include human rights in the outcome of Rio+20 and to start negotiations on an international treaty on corporate accountability (Stakeholder Forum et al, Open Letter to the UNCSD Secretary General, Co-Chairs of the Bureau for Rio+20 and Member-States of the United Nations, at <http://www.stakeholderforum.org/sf/outreach/index.php/int3day2home/717-int3day2item1>; Felix Dodds of the Stakeholder Forum, 'Earth Summit 2012 – The Rio Spirit', at <http://www.iisd.ca/mea-l/guestarticle89a.html>). On human rights, see also the Open Letter from Special Procedures mandate-holders of the Human Rights Council to States negotiating the Outcome Document of the Rio+20 Summit, at <http://www.ohchr.org/EN/HRBodies/SP/Pages/OpenLetterRio20.aspx>.

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